

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 RODRIGO RODRIGUEZ-MENDEZ,

12 Plaintiff,

13 v.

14 ELLRED, et al.,

15 Defendants.
16

No. 2:24-CV-0678-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 Bivens v. Six Unknown Agents, 403 U.S. 388 (1971). Pending before the Court is Plaintiff's
19 motion for the appointment of counsel, ECF No. 8.

20 The United States Supreme Court has ruled that district courts lack authority to
21 require counsel to represent indigent prisoners in civil rights cases. Cf. Mallard v. United States
22 Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the Court may
23 request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v.
24 Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36
25 (9th Cir. 1990). A finding of "exceptional circumstances" requires an evaluation of both the
26 likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his
27 own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017.
28 Neither factor is dispositive and both must be viewed together before reaching a decision. See id.

1 In Terrell, the Ninth Circuit concluded the district court did not abuse its discretion with respect
2 to appointment of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances. Plaintiff argues that he will miss deadlines due to delays in the mail system at the
10 prison. The Court finds that this is typical of inmates pursuing litigation in federal court. To the
11 extent Plaintiff experiences delays, he may seek additional time. Further, at this early stage in the
12 proceedings, before an answer has been filed and before any discovery has been conducted, the
13 Court cannot say that the Plaintiff has established any particular likelihood of success on the
14 merits. Further, a review of the docket reflects that Plaintiff to date has been able to present his
15 claims on his own and in a timely manner without the assistance of counsel. Finally, this case,
16 which involves claims of excessive force by federal prison officials, does not appear at this
17 juncture to present legally or factually complex issues.

18 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the
19 appointment of counsel, ECF No. 8, is denied.

20 Dated: May 14, 2024



21 DENNIS M. COTA
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26
27
28